

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of	)	
	)	
FM Broadcast Auction	)	AU Docket No. 06-170
Scheduled for March 7, 2007	)	
(Auction No. 70)	)	

To: The Wireless Telecommunications Bureau and the Media Bureau

**REPLY COMMENTS OF  
NATIONAL PUBLIC RADIO, INC.**

**Introduction**

National Public Radio, Inc. ("NPR") respectfully submits these Reply Comments in response to the Public Notice in the above-captioned proceeding announcing the auction of certain FM broadcast construction permits and requesting comment on the proposed auction procedures.<sup>1</sup>

In our initial Comments, we reiterated our position, recently expressed in response to the Auction No. 68 Public Notice, that, under Section 73.5002(a) of the Commission's rules, the initial Public Notice announcing a broadcast spectrum auction is required to address the participation of noncommercial educational ("NCE") broadcast applicants in the proceeding. Since NPR filed its initial Comments in this proceeding, the Bureaus have issued a subsequent Public Notice

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<sup>1</sup> Public Notice, DA 06-1810, rel. Sept. 21, 2006.

in Auction No. 68 that responds to NPR's initial Comments in that proceeding.<sup>2</sup>

Because the Bureaus appear to have misapprehended the point NPR was seeking to make, and since we assume the Bureaus will respond similarly when it responds to the comments submitted in this proceeding, we attempt below to clarify the matter.

The fundamental point of NPR's Comments was that potential NCE applicants are entitled to notice of the impending opportunity to obtain construction permits. The Bureaus do not dispute that otherwise qualified entities intending to construct an NCE station are entitled to apply for any of the construction permits offered in a particular auction proceeding.<sup>3</sup> We also think it is beyond dispute that, before commencing an auction of broadcast spectrum, Section 73.5002 requires the Bureaus to issue an initial Public Notice to, among other things, inform the public of the opportunity to obtain broadcast station construction permits.<sup>4</sup> NCE applications are specifically mentioned as being a subject of the initial Public Notice,<sup>5</sup> and potential NCE applicants therefore are entitled to notice when a new

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<sup>2</sup> Public Notice, Report No. AUC-06-68-B (Auction No. 68), Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007, AU Docket No. 06-101, DA 06-1949, rel. Oct. 6, 2006 [hereinafter "Auction No. 68 Report"].

<sup>3</sup> See id. at 5, ¶ 5 ("The opening of the upcoming window for nonreserved FM allotments for Auction No. 68 provides a filing opportunity for both NCE and commercial applicants."); 47 C.F.R. § 73.5002.

<sup>4</sup> See Auction No. 68 Report at 4 ("NPR's argument fails to recognize that an initial auction public notice is limited to 'announcing the upcoming auction and specifying [filing] the [sic] period' for short-form applications."), *quoting* 47 C.F.R. § 73.5002(a).

<sup>5</sup> The rule clearly specifies that the initial Public Notice provide "information" about the filing of NCE applications. 47 C.F.R. § 73.5002(a).

broadcast auction is announced. We submit, moreover, that an initial broadcast auction Public Notice that makes absolutely no mention of the opportunity to obtain construction permits to construct NCE stations, as was the case here and in the Auction No. 68 proceeding, simply does not provide the public notice to potential NCE applicants that Section 73.5002(a) of the Rules requires.

Contrary to the Bureaus' suggestion, our Comments were not intended to reopen "the broad principle of NCE auction participation."<sup>6</sup> As noted above, there is no dispute that otherwise qualified entities are entitled to apply for any of the construction permits with the aim of constructing NCE stations.<sup>7</sup> We are simply asking that the Bureaus notify potential NCE applicants of the opportunity to do so.

At the other extreme, our position was not that the initial Public Notice must contain detailed "instructions" for the submission of NCE applications.<sup>8</sup> Section 73.5002(a) imposes no such requirement, and there is no assertion to that effect in NPR's comments. The rule does require the initial Public Notice to "contain information about the completion and submission of NCE applications," but that need not mean a recitation of the instructions themselves.<sup>9</sup> The Public Notice must,

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<sup>6</sup> Auction No. 68 Report at 5, ¶ 6.

<sup>7</sup> See note <sup>3</sup>, supra.

<sup>8</sup> Auction No. 68 Report at 4, ¶ 5.

<sup>9</sup> Rule compliance might be achieved by, for instance, appropriate reference to the applicable rule, the subsequent Public Notice elaborating the matter, a Public Notice in a prior auction in which the instructions were provided, or in a similar fashion.

however, address the opportunity for potential NCE applicants to participate in the upcoming auction.<sup>10</sup>

That said, we would encourage the Bureaus to spare a few sentences and provide some basic contextual information to provide NCE applicants with meaningful notice of the opportunity to obtain construction permits. It has been more than 12 years since the Commission froze the acceptance of new full-service reserved FM applications.<sup>11</sup> Many such entities lack the financial resources to engage counsel to explain the hidden significance of Commission Public Notices that may, in fact, provide an opportunity to obtain construction permits. The Commission clearly recognized the benefit of encouraging NCE participation in the allocating of broadcast station construction permits for non-reserved spectrum,<sup>12</sup> and that benefit must surely outweigh the cost of adding a few sentences to an existing template document.

While there are many approaches to providing meaningful Public Notice, we suggest the Bureaus incorporate an explicit public notice to potential NCE applicants that includes several contextual points. First, otherwise qualified entities interested in constructing NCE stations are entitled to submit applications

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<sup>10</sup> Indeed, unless potential NCE applicants are notified of the upcoming auction, they would have no reason even to pursue the matter.

<sup>11</sup> See Public Notice, FCC Freezes Comparative Hearings, 9 FCC Rcd 1055, *modified*, 9 FCC Rcd 6689 (1994), *further modified*, 10 FCC Rcd 2877, 2879; 10 FCC Rcd 12182 (1995).

<sup>12</sup> See In the Matter of Reexamination of the Comparative Standard for Noncommercial Educational Applicants, Second Report and Order, 18 FCC Rcd. 6691, 6699-6700 (2003).

for any of the construction permits offered in the proceeding. Second, NCE applications that are mutually exclusive with one or more commercial applications will be dismissed; NCE applications that are mutually exclusive only with other NCE applications will be resolved through application of the NCE point system; and NCE applications that are not mutually exclusive with any other application will be grantable. Third, NCE applications will not be subject to minimum opening bids, upfront payments, or filing fees. Finally, otherwise qualified entities that do not specify NCE operation will be treated as commercial applicants eligible to participate in the auction but subject to all fees and payments.

In addition to affording potential NCE application public notice of a new broadcast auction, a Public Notice that briefly sets forth the foregoing points would satisfy both the letter and spirit of the Section 73.5002 requirement to provide "information about the completion and submission of . . . applications for noncommercial educational broadcast stations . . . on non-reserved channels," in an initial broadcast auction Public Notice.<sup>13</sup> Even if it were not compelled by the Commission's Rules, we think providing such information is in the public interest and not unduly burdensome.

### **Conclusion**

For the foregoing reasons, NPR urges the Bureaus to modify their initial broadcast auction Public Notices to expressly invite potential NCE applicants to

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<sup>13</sup> 47 C.F.R. § 73.5002(a).

pursue any of the subject construction permits under the conditions set forth in the Commission's rules.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.

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